

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATION BOARD
REGION 9

VESUVIUS U.S.A. CORP. ^{1/}

Employer

and

Case 9-RC-17722

UNITED STEELWORKERS OF AMERICA,
AFL-CIO, CLC ^{2/}

Petitioner

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

The Employer is engaged in the manufacture and sale of monolithic refractories at its Wurtland, Kentucky facility. The Petitioner, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit comprised of the Employer's full-time and regular part-time production and maintenance employees, including employees classified as production I, production II, production III, control room IV, maintenance V, and electrician VI employed by the Employer at its Wurtland, Kentucky facility, excluding all office clerical employees, confidential employees, and professional employees, guards and supervisors as defined in the Act. There is no history of collective-bargaining affecting the employees involved in this proceeding.

A hearing officer of the Board held a hearing on the issues raised by the petition and the Employer and Petitioner filed briefs with me. The parties disagree on whether the shipping clerk and lab technician are appropriately included in the unit. Contrary to the Employer, the Petitioner contends that the shipping clerk must be excluded from the unit as an office clerical employee who lacks a community of interest with other employees in the unit. ^{3/} The Petitioner would also exclude the lab technician from the unit apparently on the basis that she lacks a community of interest with other employees in the unit. The Employer takes the position that the lab technician must be included in the unit. I note that the Petitioner has stated a willingness to proceed to an election in any unit found appropriate.

I have carefully considered the evidence and the arguments presented by the parties on the two issues. I have concluded, as discussed below, that the shipping clerk is not an office

^{1/} The Employer's name appears as amended at hearing.

^{2/} The Petitioner's name appears as amended at hearing.

^{3/} The Petitioner also contends for the first time in its brief that the shipping clerk should be excluded on the additional basis that she is a confidential employee. As discussed briefly herein, there is no support in the record for such a contention.

clerical employee or confidential employee and that the community of interest she shares with the other unit employees is sufficient to warrant her inclusion in the unit. Additionally, the lab technician's community of interest with the other unit employees is sufficient to require her inclusion in the unit. In reaching these conclusions, I also note that excluding either one of these employees from the unit would result in a residual unit of one – thus precluding that employee from the possibility of representation because it is contrary to Board policy to certify a single person unit. See, *Roman Catholic Orphan Asylum*, 229 NLRB 251, 252 (1977); *Sonoma-Marin Publishing Co.*, 172 NLRB 625 (1968). Accordingly, I have directed an election in a unit of approximately 18 employees, including the shipping clerk and the lab technician.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. I will then present, in detail, the facts and reasoning that supports each of my conclusions on the issues.

I. OVERVIEW OF OPERATIONS:

The Employer began operating its Wurtland, Kentucky facility in about December 2001 and it became fully operational in January 2002. The Employer manufactures monolithic refractories that are used to line furnaces, tun dishes, and vessels within steel mills or any operation that uses heat, including boilers and cement kilns. The finished products consist of a granular material that is sprayed or "shot" onto the walls of the area that is being lined as opposed to using bricks for this purpose.

The Employer manufactures and ships about 80 percent of product orders within 2 days of the order being placed. About 4 percent to 6 percent of customer orders are manufactured and shipped on the same day that the order is received. An integrated and streamlined operation is necessary to accomplish this quick turn around time as the Employer maintains only a relatively small amount of product in inventory – the equivalent of only one percent of monthly production.

A. Supervisor and Managerial Structure:

The record describes the Employer's supervisory and managerial structure at its facility as follows:

Gary Snook, the Employer's plant manager, is responsible for the overall operation of the facility. Reporting to Snook are five stipulated supervisors who are in charge of various operations: Mike Gilliam, production supervisor; Chad Elliot, maintenance supervisor; Vernon Ramey, quality manager; and Pat Steele, shipping supervisor. Additionally, Bruce Morgan, human resource manager for the Employer's eastern region is an admitted supervisor. In addition to the admitted supervisors, stipulated managerial employees Merle Wood and Dave Haney work out of the Employer's facility and report primarily to supervisory personnel located at the Employer's Champaign, Illinois facility. Wood handles research and development for the Employer, while Haney is responsible for environmental and safety issues. Nancy Lewis handles personnel functions for the Employer and is stipulated to be an office clerical.

The production and maintenance employees, electrician, shipping employees and lab technician have different immediate supervisors.

Gilliam immediately supervises most of the unit employees, particularly the production employees. Elliott is the immediate supervisor for the Employer's three maintenance employees and electrician, and Steele immediately supervises the three shipping employees, including the shipping clerk. Ramey is the immediate supervisor of the lab technician.

B. Layout of the Employer's Facility:

The Employer's facility is about 96,000 square feet and is divided into various areas. There is an office area, a large storage area for bulk aggregate that is off loaded from barges plying the Ohio River, a production area with two distinct conveyor systems, a maintenance shop and storage area, a product inventory or warehouse area, a staging area, and truck and rail loading docks areas. The office and truck dock area are located at the front and left of the facility, the bulk aggregate storage is to the middle and right front of the facility, the production area is toward the rear and right of the facility, and the product inventory area is toward the rear middle and left of the facility. The maintenance shop and storage are located near the center of the facility and slightly forward and the rail dock is located toward the back right corner of the facility.

Unit employees work throughout the Employer's facility. However, unit employees primarily work in production, maintenance, inventory, and shipping (docks and staging areas).

C. Benefit and Wage Structure and Hours of Work:

All of the Employer's employees receive the same benefits, including hospitalization, vacations, holidays, sick days, and 401K participation. The salaried employees receive the same benefits with the addition of an unspecified Employer match for 401K contributions.

The wage rates for the Employer's employees varies. The production and maintenance employees receive an hourly wage rate between \$9.18 and \$15.80, with the production I employees being the lowest paid and the electrician VI being the highest paid. The average hourly rate for the 16 employees whose unit placement is not in dispute is \$11.57.

The hours of work for all employees appear to be identical. All employees in the unit, including the two employees in dispute, are scheduled to work from 7 a.m. to 3:30 p.m. from Monday through Friday. Additionally, they are all required to work overtime hours consistent with the Employer's operational needs and are paid time and a half for the overtime hours that they work.

II. SHIPPING CLERK:

Margaret Hayden is the Employer's sole shipping clerk. She is paid \$10 an hour and receives the same benefits as the Employer's other hourly employees. Likewise, Hayden works the same hours as the other unit employees and she records her work time on a work slip that she signs and turns in. All of the employees who are undisputedly in the unit record their work hours in the same manner.

Although the record shows that Hayden works out of a partitioned office located in the Employer's administrative office complex, which she shares with Steele, Hayden has significant contact with unit employees. Hayden uses a computer to perform her principal duties of processing customer orders and recording the concomitant reduction in inventory through the Employer's J.D. Edwards software. She begins this process the day before by using a form designated as a "Truck/Rail Sheet" to indicate the customer for whom the product is to be shipped, the date of shipping, the number of pallets, and any special instructions for each order. She provides these sheets to a unit employee who is responsible for operating a forklift for the purpose of staging the product that is to be shipped out each day. Another unit employee is responsible for loading the staged product on to trucks and railcars for shipment to the Employer's customers.

A unit employee completes the "Truck/Rail Sheet" to indicate that the ordered product has been staged. Either the unit employee or Hayden obtains Ramey's written approval on the form for quality control purposes. The forms are then returned to Hayden who "ships out" the product. She accomplishes this by matching the "Truck/Rail Sheet" with a form generated by Steele called a "Load Sheet." Hayden then takes product and lot number information off the "Truck/Rail Sheet" and enters this data into the J.D. Edwards system. This has the effect of removing this product and lot number from the Employer's electronic inventory. Hayden regularly speaks to the two control room operators, also unit employees, when necessary data such as the lot numbers for product are not included on the "Truck/Rail Sheet." This occurs for different reasons, including when the product is still being manufactured and the control room operators have not yet entered the lot numbers into the J.D. Edwards system. On some occasions the lot number recorded on the "Truck/Rail Sheet" will be incorrect and Hayden may again speak with the control room operators in an attempt to discern the error. Hayden has contact with the control room operators over these types of issues on nearly a daily basis.

After Hayden has entered the product as "shipped out" in the computer system a packing list and a bill of lading is generated. Hayden provides two copies of the packing list to a unit employee with three copies of the bill of lading. The driver/agent transporting the product for the customer receives a packing list and two copies of the bill of lading when the truck is loaded.^{4/} The unit employee returns a copy of the bill of lading to Hayden after it has been signed by the driver/agent for the customer and initialed by the unit employee. Hayden assists the unit employee on a daily basis in ensuring that this paperwork is received by drivers/agents by handing the paperwork to the drivers and returning it to the unit employee for his written acknowledgment that he loaded each truck with the specified product. To conclude the shipping process, Hayden records on a separate form those loads that have been physically shipped out of the facility as represented by the bills of lading and packing lists that are returned to her. She spends between 10 percent and 50 percent of her work hours on the plant floor, with more time spent on the plant floor when a higher number of loads are being shipped out on a daily basis.

In addition to the above-described duties, the record reflects that Hayden has occasionally performed other duties. Sometimes she sweeps the dock areas during slow periods. She also performs some duties for Lewis when the latter is absent or on vacation. Thus, Hayden will take the hours of work off of employees' time sheets and put them on a spreadsheet maintained by Lewis. She has also, on occasion, been asked to pass out employee paychecks.

^{4/} The Employer does not employ drivers who operate from the facility.

III. ANALYSIS AND CONCLUSION – SHIPPING CLERK:

The Board has long held that the distinction between office and plant clericals is rooted in community of interest concepts. *Minneapolis-Moline Co.*, 85 NLRB 597, 598 (1949), *Cook Composites & Polymers Co.*, 313 NLRB 1105 (1994). Moreover, the Board has consistently included warehouse clerical employees in overall warehouse units when the duties the clericals perform are integral to the functioning of the warehouse operations and they regularly interact with the other warehouse employees in the course of performing these duties. *Fleming Foods, Inc.*, 313 NLRB 948-949 (1994); *John N. Hansen Co.*, 293 NLRB 63, 64-65 (1989); *S & S Parts Distributors Warehouse*, 277 NLRB 1293, 1296 (1985). Typical plant/warehouse clerical duties include maintaining and verifying inventory and formulating documents to facilitate production and dealing with matters associated with shipment of product. See, e.g., *Fleming Foods, Inc.*, supra; *Hamilton Halter Co.*, 270 NLRB 331 (1984). Based on the record testimony, it is clear that Hayden falls into the category of a warehouse or plant clerical employee.

The evidence establishes that Hayden has a strong community of interest with the other unit employees. She shares similar working conditions, pay, and benefits. Hayden is on the plant floor a substantial percentage of her work day and she has regular work related interaction with several unit employees on a daily basis. In fact, her duties with regard to shipping and maintaining an accurate record of the Employer's inventory are integral to the production process. *Fleming Foods, Inc.*, supra. See also, *John N. Hansen Co.*, 293 NLRB at 64-65 (1989). There is no evidence in the record that she has any work-related interchange or interaction with office clerical employees.^{5/} Nor is there any evidence that Hayden performs any typing for managers or supervisors or that she performs any other traditional office clerical work. In *Hamilton Halter Co.*, supra, the Board found that an employee who performed duties similar to those of Hayden shared a sufficient community of interest with the production employees to require his inclusion in the unit as a plant clerical. In *Jumbo Produce*, 294 NLRB 998, 1009 (1989), the Board found two employees, with duties similar to those of Hayden, who worked in a warehouse office and were part of the order flow process to be plant clericals and included them in the warehouse unit.

Although Petitioner cites no cases, it argues that Hayden's duties are principally office clerical in nature and that, unlike the conceded unit employees, she does not wear safety glasses and has not been trained to operate a forklift. I find the distinctions relied upon by Petitioner to be insufficient to override the numerous factors which support a finding that she shares a significant community of interest with the unit employees.

Based on the foregoing, the entire record, and having carefully considered the arguments of the parties at the hearing and in their briefs, I conclude that Margaret Hayden shares a sufficient community of interest with other employees to require her inclusion in the unit. I will, therefore, include her in the unit. In reaching this conclusion, I note, contrary to the assertion by the Petitioner in its brief, that there is no evidence that Hayden assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations, or that she regularly substitutes for employees having such duties. Her

^{5/} With the possible exception of Lewis, it appears from the record that office clerical employees are not employed at the Employer's Wurtland, Kentucky facility.

occasional substitution for Lewis with regard to inputting payroll data and distributing paychecks does not confer confidential status. See, generally, *B.F. Goodrich Co.*, 115 NLRB 722, 724 (1956).

IV. LAB TECHNICIAN:

The Employer's sole lab technician is Terry Arnn, who was hired with no prior experience and a high school education. Arnn received on-the-job training to learn her duties. She is paid a salary of \$20,384 annually, which equates to about \$10.19 an hour – or the equivalent of a unit employee holding the title of production II. Arnn is a salaried non-exempt employee who completes a work slip every 2 weeks and is paid on a bi-weekly basis. Arnn's benefits are the same as those of the other unit employees with the exception that she receives an unspecified Employer match to any 401K contributions that she makes. Arnn takes her breaks with the other production and maintenance employees.

Arnn works out of two separate labs, a dry lab and a wet lab. The dry lab is located over the control room in the production area and the wet lab is located in the administrative office complex. The door to the wet lab opens directly into the plant. Arnn begins her work day by checking the wet lab to ensure that it is ready for testing. Arnn proceeds to the control room where she obtains a daily or weekly production schedule that indicates the type and order of the product to be manufactured. She regularly interacts with the control room employees to obtain this information. Arnn takes this information to the dry lab and inputs data, including lot numbers, into the computer using the quality control segment of the J.D. Edwards software.

After performing the above tasks, Arnn proceeds to the bagging stations where the product is being placed in large bags in preparation for shipment. There are separate bagging stations for the two production lines – SRP and baselite. When production is busy Arnn may need to take four samples at the same time. The production employees who operate the baggers assist Arnn by setting aside the samples for her to collect. This process requires that Arnn and the bagging employees communicate regularly to ensure that she is receiving all the needed samples. Arnn then utilizes a small cart to transport the samples to the dry lab or the wet lab for testing. The type of testing administered to each sample depends on the type of product being manufactured. Arnn may test as many as 80 product samples in a given work day. In addition to interacting with the bagging employees to obtain samples, Arnn regularly interacts with the employee who operates the crusher, a machine used to crush and grind the product before it is placed into different bins that separate the product by size. Arnn interacts with this employee for the purpose of obtaining samples from the different bins prior to the additive or binding material stage of the production process. Depending on the type of product being manufactured, Arnn spends between 25 percent and 50 percent of her working hours on the plant floor retrieving samples.

When the testing process for a particular group of samples is completed Arnn then logs the testing data into her computer located in the dry lab. This data is maintained in a shared database that is accessible to other employees in the plant, including Quality Manager Ramey. When production is slower Arnn performs some ancillary production tasks such as tearing asphalt paper used to line the pallets that the finished product is placed on and shaking out large plastic bags that go over product bags as part of the shrink wrap process.

V. ANALYSIS AND CONCLUSION – LAB TECHNICIAN:

At the outset of my analysis of Arnn's status, I note that the parties stipulated that she is not a technical employee and the record evidence fully supports this stipulation. Although she bears the title of lab technician, the record discloses that Arnn is essentially a quality control employee. The Board has long included quality control employees in production and maintenance units, where the quality control employees share a community of interest with the production and maintenance employees. See, *W. R. Grace & Co.*, 202 NLRB 788 (1973); *Owens-Illinois, Inc.*, 211 NLRB 939, 941 (1974); *Blue Grass Industries*, 287 NLRB 274, 299 (1987).

Applying the above precedent, I note that Arnn shares a substantial community of interest with other employees in the unit. Although paid on a salaried basis, her hourly rate is the same as the four production II employees in the unit, including her rate for overtime hours of work. Arnn works the same hours as other unit employees, takes the same breaks, does not possess significantly greater skills or education, and spends much of her time working under the same conditions as the unit employees. Arnn's duties also require that she have regular work-related interaction on the plant floor with several of the employees in the unit. Mitigating against her inclusion in the unit is her different method of pay and better benefits with regard to the 401K match, her separate immediate supervision, and her differing job functions from those of the other unit employees. However, given the similarity in the wages, hours, working conditions and skills between Arnn and other unit employees, as well as her functional integration in the production process by virtue of her testing of production quality, I find that Arnn shares a substantial community of interest with the unit employees requiring her inclusion in the unit. In reaching this conclusion I am also mindful that as the sole quality control employee she could not constitute a separate appropriate unit. Additionally, assuming that Arnn and Hayden were both excluded from the unit, the evidence discloses that each has a greater community of interest with other unit employees than they have with each other. Moreover, where an overall or plantwide unit is involved, I note that the Board is reluctant to leave a residual unit where the employees could be included in the larger group. See, *Huckleberry Youth Programs*, 326 NLRB 1272, 1274 (1998); *Airco, Inc.*, 273 NLRB 348 (1984).

Although citing no cases, Petitioner relies on Arnn's salaried status, access to computer data and authority to shut down production lines, to contend that she should be excluding from the unit. I find these distinctions to be insufficient to overcome the strong community of interest factors described above.

Based on the foregoing and the entire record, I conclude that Arnn shares a substantial community of interest with other employees that requires her inclusion in the unit. I will, therefore, include her in the unit.

VI. EXCLUSIONS FROM THE UNIT

The parties agree, and the record shows, and I find that the following persons are supervisors with the authority within the meaning of the Act: Gary Snook, plant manager; Mike Gilliam, production supervisor; Chad Elliot, maintenance supervisor; Vernon Ramey, quality manager; Pat Steele, shipping supervisor; and Bruce Morgan, human resource manager for the Employer's eastern region. Accordingly, I will exclude them from the unit.

The parties agree, and the record shows, that Merle Wood, research and development; and Dave Haney, safety and environmental, are managerial employees who do not share a community of interest with unit employees. Therefore, I will exclude them from the unit. Additionally, the parties agree, and the record shows, that Nancy Lewis is an office clerical employee who does not share a community of interest with unit employees. Therefore, I will also exclude her from the unit.

VII. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, including employees classified as production I, production II, production III, control room IV, maintenance V, electrician VI, shipping clerk, and lab technician, employed by the Employer at its Wurtland, Kentucky facility, excluding all office clerical employees, confidential employees, and professional employees, guards and supervisors as defined in the Act.

VIII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Steelworkers of America, AFL-CIO, CLC. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees

engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **November 29, 2002**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (513) 684-3946. Since the list will be made available to all parties to the election, please furnish **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club*

Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

IX. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **December 6, 2002**. The request may **not** be filed by facsimile.

Dated at Cincinnati, Ohio this 22nd day of November 2002.

/s/ Richard L. Ahearn

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Classification Index

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